

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 Shane A DeLorenze,

11 Petitioner,

12 v.

13 Ron Haynes,

14 Respondent.

CASE NO. 3:19-cv-05578-RBL-JRC

ORDER

15 The District Court has referred this 28 U.S.C. § 2254 action to United States Magistrate  
16 Judge J. Richard Creatura. Petitioner Shane A. DeLorenze filed his federal habeas petition  
17 seeking relief from a state court conviction. *See* Dkt. 3. Petitioner seeks habeas relief from his  
18 2015 conviction of second-degree rape. Dkt. 3.

19 In respondent's original answer, he argues that petitioner raises six grounds for relief: (1)  
20 the evidence presented at trial in support of the elements of penetration and lack of consent was  
21 constitutionally insufficient; (2) the prosecutor committed misconduct in closing argument by (a)  
22 exhorting the jury to "do its job" and find petitioner guilty and (b) disparaging defense counsel  
23 by describing defense counsel's closing argument as absurd; (3) defense counsel provided  
24 ineffective assistance at trial by (a) failing to object to the admissibility of an officer's opinion

1 during the police interview regarding petitioner’s veracity and guilt and (b) failing to object to  
2 the prosecutor’s closing argument; (4) the trial court erred by admitting petitioner’s statement to  
3 police because petitioner was in an alcoholic blackout state and was therefore incapable of  
4 voluntarily waiving his right to remain silent under the Fifth Amendment; (5) defense counsel  
5 provided ineffective assistance at trial by stipulating to the admissibility of petitioner’s statement  
6 to police, failing to move to suppress the statement, and failing to request a CrR 3.5 hearing; and  
7 (6) appellate counsel provided ineffective assistance by failing to present claims 4 and 5, *supra*,  
8 as assignments of error on direct appeal. Dkt. 6 at 3 (citing Dkt. 3 at 16-41). Respondent argues  
9 that petitioner has failed to show that the state court’s adjudication was an unreasonable  
10 application of federal law. Dkt. 6. Petitioner did not file a traverse. *See* Dkt.

11 In the petition, petitioner also argues that the trial court abused its discretion and that the  
12 audio recording of his statement to the police contained prejudicial material. Dkt. 3 at 38.  
13 Petitioner includes this claim under “Ground Five.” *Id.* The Court interprets the petition to  
14 include a second subpart to petitioner’s fifth ground for relief (“Ground Five, subpart (b)”):  
15 whether petitioner was denied the right to a fair trial based on the admission of petitioner’s audio  
16 recorded statement to police. Dkt. 3 at 38. *See Darden v. Wainwright*, 477 U.S. 168, 179–183  
17 (1986) (When evidence is introduced that is so unduly prejudicial that it renders the trial  
18 fundamentally unfair, the Due Process Clause of the Fourteenth Amendment provides a  
19 mechanism for relief.); *Payne v. Tennessee*, 501 U.S. 808, 825 (1991); *Kansas v. Carr*, 136 S.Ct.  
20 633, 644 (2016) (citing *Payne* for the proposition that the Due Process Clause prohibits the  
21 introduction of unduly prejudicial evidence that would render the trial fundamentally unfair);  
22 *Alberni v. McDaniel*, 458 F.3d 860, 864 (9th Cir. 2006) (“The Supreme Court has established a  
23 general principle that evidence that 'is so extremely unfair that its admission violates  
24

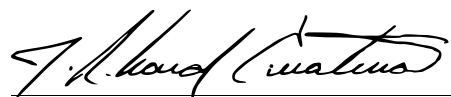
1 fundamental conceptions of justice' may violate due process.”); *See also Porter v. Ollison*, 620  
2 F.3d 952, 958 (9th Cir. 2010) (“Prisoner pro se pleadings are given the benefit of liberal  
3 construction.”). Respondent’s answer does not address Ground Five, subpart (b). *See* Dkt. 6.

4 Pursuant to the Rules Governing Section 2254 Cases, respondent is required to address  
5 all allegations presented in a habeas corpus petition. While Ground Five, subpart (b) may be  
6 unexhausted and procedurally barred, *see* Dkt. 7 at Exhibits 10, 12, 13, 15, 16, 17, 19, 22, 23,  
7 petitioner was not provided with an opportunity to respond and thus, the Court will not *sua*  
8 *sponte* rule on that claim at this time. *See Boyd v. Thompson*, 147 F.3d 1124, 1128 (9th Cir.  
9 1998) (If dismissing a claim as unexhausted and procedurally defaulted, a federal habeas court  
10 must give a petitioner notice of the procedural default and an opportunity to respond to the  
11 argument for dismissal.).

12 As such, the Court requests a supplemental answer addressing Ground Five subpart (b)  
13 and whether petitioner was denied the right to a fair trial based on the admission of petitioner’s  
14 audio recorded statement to police. The supplemental answer shall be filed on or before  
15 November 1, 2019. Petitioner may file a supplemental traverse (response to the supplemental  
16 answer) addressing only the new arguments raised by respondent related to Ground 5, subpart (b)  
17 on or before November 8, 2019. Respondent may file a reply to the supplemental traverse on or  
18 before November 15, 2019.

19 The Clerk of Court is directed to re-note the petition for consideration for November 15,  
20 2019.

21 Dated this 16th day of October, 2019.

22  
23 

24 J. Richard Creatura  
United States Magistrate Judge